ported at 153 Wash. Dec. 358, 333 P.2d 924 (1959), and is included in the certified transcript (Tr. 82-91) and in Appendix A, *infra*, pp. 39-48.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3), since rights, privileges and immunities specially set up and claimed under the statutes of the United States have been denied.

On February 10, 1959, the Supreme Court of Washington entered a judgment granting a writ of mandate compelling the Superior Court for King County, the Honorable Lloyd Shorett, judge, to assume jurisdiction over a cause of action brought by Yellow Cab Service, Inc., a Washington corporation, against Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its secretary-treasurer, seeking an injunction restraining Local 465 from picketing the premises of the corporation (Tr. 92-93; Appendix A, *infra* pp. 49-50). By order of Associate Justice William O. Douglas, the time for filing this petition was extended to and including May 25, 1959.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187. Pertinent sections of the Act are reproduced in Appendix B, *infra*, pp. 51-55.

QUESTIONS PRESENTED

Does the National Labor Relations Board have jurisdiction over a strike, and peaceful picketing incident

thereto, called by a labor union against a taxicab company which does not operate across state lines but which does an annual gross business of $1,429,914.02; which possesses franchises by which it is granted exclusive rights to pick up passengers at certain railroad, airline and steamship terminals serving interstate carriers of passengers and baggage, and from the exercise of which franchises it receives annual revenue in excess of $156,062.40; and which is party to agreements with certain railroads by which it agrees to transfer passengers, traveling on "through" tickets, from the railroad terminals to the steamship docks, or vice-versa, and from the exercise of which agreements it receives an annual revenue of $1,436.55?

The court below answered this question in the negative.

STATEMENT OF THE CASE

1. The Seattle Yellow Cab Enterprise

a. Sale of taxicabs by the Yellow Cab Company, a partnership, to 118 purchasing corporations

Prior to 1955 and 1956, the Yellow Cab Company, a partnership, operated a fleet of more than 120 taxicabs in the city of Seattle, Washington. The drivers and dispatchers employed by the company to operate and dispatch these taxicabs were members of Taxicab Drivers and Chauffeurs Local Union No. 465, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the company entered into collective bargaining contracts with this union providing wages, hours and conditions of employment for these drivers and dispatchers (St. 4-5, 8, 67).

In 1955 and 1956, however, the Yellow Cab Company undertook to liquidate its assets by selling all of its taxicabs, individually, to taxicab drivers and others who were interested (St. 5-6). These sales were accomplished in the following manner:

The Yellow Cab Company first organized Yellow Cab Service, Inc., a Washington corporation, and then sold to this corporation the service facilities and equipment, other than taxicabs, used by it in conducting a taxicab business, including the lease on the company garage and office facilities, the radio and telephone dispatching equipment, the shop and repair equipment, etc. (St. 23-24).

The Company then solicited buyers for the taxicabs and when willing buyers were obtained, it required these buyers, or purchasers, to incorporate under the laws of the State of Washington and, further, to execute a certain "conditional sales contract" and also a certain "agreement."

Pursuant to the terms of the "conditional sales contract" each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in Yellow Cab Service, Inc. The contract provides that said property was to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price. Upon payment in full of the purchase price, title would then vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corpora-

tion." The contract further provides that should the purchasing corporation breach any of the provisions of said agreement then the Yellow Cab Company can repossess the property conveyed (Tr. 10-11, 26-27; St. 6; Def. Ex. 2).

At the same time that each purchasing corporation executed the "conditional sales contract" described in the preceding paragraph, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the Yellow Cab Company and Yellow Cab Service, Inc., on the other. This agreement provides that the Yellow Cab Company will retain the controlling shares in Yellow Cab Service, Inc., until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to Yellow Cab Service, Inc. This agreement further provides that the purchasing corporation agree to "conform to, and be bound by, uniform rules and regulations" adopted by the board of directors of Yellow Cab Service, Inc., covering "among other things, but without limitation, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising, and maintenance and care of the operator's taxicab." It also provides that the purchasing corporation agrees to "conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle" (Tr. 10-11, 26-27; Def. Ex. 3).

Upon the execution of the "conditional sales contract" and the "agreement," each purchasing corpora-

tion pledged its four shares of Series 2 common stock in Yellow Cab Service, Inc., to the Yellow Cab Company as security guaranteeing its performance of the terms and conditions of the "conditional sales contract." At the same time, and for the same purpose, the president of each purchasing corporation personally pledged a number of shares in his corporation to the Yellow Cab Company (St. 102, 111, 125; Def. Ex. 37).

During the years 1955 and 1956, the Yellow Cab Company, pursuant to the methods and contracts described above, sold some 120 taxicabs to some 118 purchasing corporations. At the time of the trial of this case none of the purchasing corporations had completed the payments required of it under the "conditional sales contract." In several instances the purchasing corporations could not make the payments required and the taxicabs were repossessed by the Yellow Cab Company and resold to other purchasing corporations (St. 5-6, 64-65, 103, 109-110).

b. The 118 purchasing corporations and Yellow Cab Service, Inc., conduct an integrated taxicab business

Although the taxicabs formerly operated by the Yellow Cab Company are now being operated by some 118 purchasing corporations, these corporations, together with Yellow Cab Service, Inc., continue to run an integrated taxicab business in the City of Seattle. Yellow Cab Service, Inc., is hereafter referred to as "the service corporation."

All taxicabs are painted the "Yellow" color pursuant to color rights granted to the purchasing corporations by the service corporation, and all carry advertising for

the Standard Oil Company, the revenue from which is paid to the service corporation. The individual license or permit issued for each taxicab by the city of Seattle is issued jointly in the name of the purchasing corporation involved and the service corporation (Tr. 3, 8; St. 107).

All the taxicabs are centrally dispatched through the telephone and radio dispatching facilities operated by the service corporation in the garage and office which it leases at 902 Madison Street, Seattle. Generally, shifts begin and end at this garage, and the taxicabs are stored there when not in use (St. 23, 25, 27; Def. Ex. 13, 16, 20, 22).

The service corporation employs approximately 10 employees who operate the radio and telephone equipment used in dispatching the taxicabs. These dispatchers are members of Taxicab Drivers and Chauffeurs Local Union No. 465. The service corporation also employs "traffic men" who investigate accidents in which Yellow taxicabs are involved and who act as starters at the train depots and other places where Yellow taxicabs accumulate, and it employs office and clerical employees who do the bookkeeping, accounting and payroll work for the service corporation and the 118 purchasing corporations (Tr. 3, 9; St. 23-25, 27-28, 42, 143-144).

The 120 taxicabs operated by the 118 purchasing corporations are usually driven by the presidents of the respective purchasing corporations (hereafter called the "owners") and by employees specifically employed for that purpose (hereafter called the "employee-drivers"). The employee-drivers are members of Taxicab

Drivers and Chauffeurs Local Union No. 465 (Tr. 2, 8, 20; St. 143, 198, 205).[2]

One of the employees of the service corporation is designated as "personnel manager." By action of the 118 purchasing corporations this "personnel manager" has been vested with authority to hire, fire and discipline the employee-drivers and to assign them to shifts on various taxicabs being operated by the various purchasing corporations, as well as assign these employees their days off, emergency leaves and vacations, and this authority has been extensively exercised by the "personnel manager." There is a considerable interchange of employees from taxicab to taxicab, which is done upon the assignment of the "personnel manager." Personnel records relating to all employee-drivers are maintained by the "personnel manager" (St. 42, 46-48, 133, 135, 137, 143, 147-148; Def. Ex. 22, 42).

At the end of each shift the driver of each taxicab, whether he be an employee-driver or an owner, is required to turn the gross proceeds from that shift (known as the "turn") over to the office cashier working for the service corporation. These funds are then credited to the account of the purchasing corporation operating the particular cab. From these funds, the service corporation deducts and pays (1) the wages due to the employee-drivers; (2) the payments due for Social Security, Workmen's Compensation, Unemployment Compensation and Health and Welfare cover-

[2]Testimony in the case did not reveal the actual number of drivers working for the purchasing corporations but union records available to counsel for the petitioners indicate that, at the time of the strike in September, 1958, there were approximately 150 so employed.

ages; (3) the automobile insurance premiums; (4) the payments due under the conditional sales contract; and (5) the service charges due to service corporation (known as the "nut"). The amount remaining is paid to the owners. Checks are issued to the owners and to the employee-drivers once a week. The paychecks issued to the employee-drivers list the service corporation as the payor (St. 24-26, 148, 152, 160-162, 169-170, 200, 203; Def. Ex. 43, 44; Plt. Ex. 46).

There is one blanket policy of fire, theft and liability insurance covering all the taxicabs. The service corporation assists the purchasing corporations in negotiating for this insurance coverage and deducts the insurance premiums from the daily "turn" and pays said premiums directly to the insurance company. Owners who have too many accidents may have their cabs repossessed and resold to someone else (Tr. 2, 8; St. 25-27, 42-43; Def. Ex. 20).

The service corporation has a five-man board of directors, three of whom represent the Yellow Cab Company and two of whom represent the purchasing corporations. This board of directors meets regularly for the purpose of discussing matters of common interest, including the adoption of rules and regulations relating to "the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising and the maintenance and care of the individual taxicabs." (Tr. 23; St. 40-41, 83-85; Def. Ex. 17, 19, 20, 30).

The owners hold periodic meetings at which times they have adopted uniform rules and regulations for

the conduct of their joint business, including the procedure to be followed by the "personnel manager" in the hiring, firing, disciplining and assigning of employee-drivers. The owners have also elected an owner's committee to act for the entire group of owners in the interval between owners' meetings. Two of the directors of the service corporation are members of this owners' committee. The president of service corporation has attended meetings of the owners' committee and given advice to that committee (St. 32, 36-37, 43, 84, 153; Def. Ex. 14, 16, 22).

Once a week the service corporation issues the "Yellow Cab Service, Inc., Bulletin" over the signature of the president of that corporation. This bulletin is published as a house organ and is distributed to all owners and employee-drivers. It contains the "operating procedure" and "rules and regulations" adopted at the owners' meetings, as well as announcements and directives from the service corporation (St. 28, 31, 133-134; Def. Ex. 6 through 23).

All of the taxicabs operate largely in Seattle and King County. None of them operate across state lines (St. 57-58).

c. Revenue received by the Seattle Yellow Cab enterprise and franchises held by it

During the year from July 1, 1957 through June 30, 1958, the 120 Yellow taxicabs operated by the 118 purchasing corporations earned a gross revenue of $1,429,914.02 (St. 50; Def. Ex. 24).

The service corporation owns franchises or conces-

sion agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, air line and steamship terminals in Seattle, which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Railroad Dock. In addition Yellow taxicabs deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (Tr. 13, 29; St. 14-18; Def. Ex. 5, 19).

Copies of the franchise or concession agreements between the service corporation and the airports and the Canadian Pacific Railway Dock were not available (St. 15-18). However, a copy of the agreement between the service corporation and the Northern Pacific Railway and the Great Northern Railway, joint operators of the King Street Railroad Station, provides, in part, as follows:

"III.

"The Railroad Companies in order to care for their incoming passengers desire to have at the King Street Station at all times when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers. The Railway Companies . . . do therefore grant to the Cab Company the exclusive right to occupy with taxicabs the space belonging to the Railway Companies situate adjacent to Third Avenue South alongside said King Street Station as shown

enclosed in red lines on the map hereto attached and made a part of this agreement.

"IV.

"The Cab Company agrees to furnish and keep in attendance at said station during the hours when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers, and agrees that passengers shall be transported to and from said station at reasonable rates, not to exceed those fixed by ordinance of the City of Seattle.

"V.

"The Cab Company agrees to remove from its service at that point any driver who for any reason is unsatisfactory to the Superintendent of the King Street Station upon being requested to do so by said Superintendent." (Def. Ex. 5).

There exists a similar agreement with the Union Pacific Railroad covering the Union Railroad Station (St. 16).

No figures are available showing the amount of revenue earned by Yellow taxicabs from taking passengers to and from the railroad stations and the steamship dock (St. 55). Company records show, however, that during the year from July 1, 1957, through June 30, 1958, Yellow taxicabs earned a gross revenue of $156,062.40 from picking up passengers at the King County Airport and the Seattle-Tacoma International Airport, pursuant to the franchise or concession agreements. During this same period these taxicabs earned an additional gross revenue of $46,818.00 from delivering passengers to these airports (St. 52-56, Def. Ex. 24).

The service corporation also holds agreements with the railroads operating out of the King Street Station and the Union Station by the terms of which Yellow taxicabs are exclusively utilized by said railroads to transfer through-passengers and baggage between said stations and the Canadian Pacific Railroad Dock, and vice-versa. During the year from July 1, 1957 through June 30, 1958, the Yellow taxicabs earned a gross revenue of $1,436.00 from furnishing such transfer services (St. 14-16, 19-21, 51-52; Def. Ex. 4, 24).

2. The Strike of Taxicab Drivers and Chauffeurs Local Union No. 465 Against the Seattle Yellow Cab Enterprise

At the time the taxicabs were sold to the purchasing corporations the Yellow Cab Company and Taxicab Drivers and Chauffeurs Union Local No. 465 were parties to a collective bargaining agreement covering the drivers and dispatchers employed by the Company. In June, 1956, after the sale of the taxicabs, this contract expired. Subsequently, the purchasing corporations appointed a committee of owners, and this committee, together with representatives of the service corporation, negotiated a new collective bargaining agreement with Local 465 covering the employee-drivers and dispatchers. Each purchasing corporation, and the service corporation, signed this agreement. By its terms, this agreement ran from August 1, 1956 to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days notice to the other party. On March 26, 1958, the service corporation and the 118 purchasing corporations terminated this agreement and notified Local 465 that they were willing to

negotiate the provisions of a new agreement (Tr. 12, 27; St. 8-11, 77, 79-80, 126-127, 172-174, 180, 205; Def. Ex. 1; Plt. Ex. 27).

During the ensuing months, representatives of Local 465 met and corresponded with representatives of the purchasing corporations and the service corporation in an attempt to arrive at mutually satisfactory terms for a new contract covering drivers and dispatchers. As one of the conditions for agreeing to a new contract, Local 465 requested that the purchasing corporations and the service corporation settle with the Local several pending grievances which arose during the life of the prior contract, including the failure of the service corporation to pay over to the trustees of a pension fund the sum of approximately $60,000.00 in pension premiums on employee-drivers, required by the terms of the prior contract. Another request of Local 465 was that it have some assurance that the service corporation, through its officers or employees, would participate in the settling of any grievances which arose during the life of the new contract. However, the negotiations between the parties were unsuccessful and on September 16, 1958 the Local called a strike against the purchasing corporations and the service corporation and as an incident thereto caused two pickets to peacefully patrol the garage and office at 902 Madison Street, Seattle. The pickets carried signs reading

"YELLOW CABS
are
UNFAIR
to
TAXICAB DRIVERS LOCAL
UNION NO. 465."

On September 17 and again on September 18, 1958, the Federal Mediation and Conciliation Service requested the parties to meet with a representative of said service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held but no agreement was reached and the strike and picketing continued (Tr. 12-13, 27-28; St. 81-82, 96-100, 117-123, 175, 177-178, 183-188, 191-192; Def. Ex. 31, 32, 33, 47 and 48).

3. Proceedings in the Trial Court

On September 23, 1958, Yellow Cab Service, Inc., brought an action in the Superior Court for King County, Washington, against Local Union 465, George Lancaster, its secretary-treasurer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeking a permanent injunction restraining defendant Local and defendant International from picketing its place of business at 902 Madison Street. The complaint alleged that plaintiff corporation was willing to sign a collective bargaining contract with defendant Local covering the dispatchers employed by said corporation, that no labor dispute existed between it and the defendant Local, that the picketing was therefore unlawful, and that it was causing plaintiff to suffer irreparable damage (Tr. 1-6). Contemporaneously with the filing of this complaint, plaintiff corporation also obtained an order requiring the defendants to appear and show cause why a temporary injunction should not issue in accordance with the allegations of the complaint, pending a trial on the merits of plaintiff's request for a permanent injunc-

tion (Tr. 7). Defendants Local 465 and George Lancaster answered the complaint alleging, *inter alia*, that the purchasing corporations and the plaintiff service corporation constituted a single business enterprise, that this enterprise was engaged in an industry "affecting commerce" within the meaning of the federal Labor Management Relations Act, 29 U.S.C. Sees. 141-187, that the activities of defendant Local 465 in striking and picketing were protected activities within the meaning of said Act, and that the Superior Court of King County had no jurisdiction over plaintiffs' action (Tr. 8-15).

On October 1, 7, 8 and 9, 1958, the defendants Local 465 and George Lancaster appeared before the Honorable Lloyd Shorett, one of the judges of the Superior Court for King County, to show cause why a temporary injunction should not issue (St. 1-227). The parties then stipulated that the hearing pursuant to the order to show cause was to be treated as a trial on the merits of plaintiff's request for a permanent injunction (St. 22-22a).

The defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not appear and plaintiff offered no proof that service of process had been had upon it (St. 1-227).

At the conclusion of the trial, the court orally ruled that the 118 purchasing corporations and the service corporation functioned as one business operation or enterprise; that activities of this enterprise affected interstate commerce; and that the National Labor Relations Board, and not the Superior Court for King

County, had jurisdiction to determine the lawfulness, or unlawfulness, of Local 465's conduct in striking and picketing (St. 227-232).

4. Proceedings in the Supreme Court of Washington

Immediately upon the trial court's ruling that it had no jurisdiction over plaintiff's cause of action, plaintiff service corporation filed, in the Supreme Court of Washington, an *ex parte* application for an alternative writ of mandate requiring the Superior Court for King County to assume jurisdiction of its application for an injunction, together with an affidavit in support thereof (Tr. 31-61). The court below granted the application and ordered the trial court to appear and show cause on November 13, 1958, why it should not take and assume jurisdiction over plaintiff's cause of action (Tr. 62-65).

The respondent trial court then filed a return and answer to the application for alternative writ of mandate (Tr. 66-81).

On November 13, 1958, the cause was heard by the court below, sitting *en banc*.

On January 8, 1959, the court below filed an opinion in which it held that the trial court was in error in holding that the jurisdiction of the case rested with the National Labor Relations Board. The court ruled that the activities of the purchasing corporations and the service corporation, considered as a single enterprise, do not fall within the scope of the National Labor Relations Act and are not subject to the jurisdiction of the

National Labor Relations Board (Tr. 82-91, Appendix A, *infra*, pp. 39-48).[3]

The court below stated the issue to be whether "Seattle's Yellow cab system is 'in (interstate) commerce.'" (Tr. 86, Appendix A, *infra*, pp. 42-43). The court acknowledged that the Seattle Yellow Cab enterprise did an annual gross business of $1,429,914.02, and that the National Labor Relations Board has announced that it will take jurisdiction over any taxicab business doing an annual gross business of $500,000, but, said the court, "the test is not the amount of gross volume of business, but whether the local transportation service in an integral part of interstate commerce" (Tr. 86; Appendix A, *infra*, p. 43).

Relying on *U.S. v. Yellow Cab Company*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, and upon *Mateo v. Auto Rental Company* (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, the court held that the activities of a local taxicab company, even though it delivers passengers to and from the terminals of railroad stations and airlines, do not constitute "an integral part of interstate commerce." The court also cited the *Checker Cab Company* decision of the National Labor Relations Board, 110 NLRB 683 (1954), wherein the Board declined to assert jurisdiction over a local taxicab company (Tr. 87-89; Appendix A, *infra*, pp. 44-46).

[3]In the first paragraph of its opinion, the court states that the case involves an action against "The International Brotherhood of Teamsters." As noted previously, the International Brotherhood of Teamsters did not appear at the trial and plaintiff made no showing that service had been made upon it. The only defendants in the case were Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster, its secretary-treasurer.

The court also stated that the activities of the union in striking and picketing the Seattle Yellow Cab system could not be said to be "burdening or obstructing commerce" as there was no testimony in the record to the effect that the strike impaired taxicab service to or from the railroad terminals, airports and docks (Tr. 90; Appendix A, *infra*, p. 47).

The court indicated that perhaps the operation in which Yellow cabs carry through-passengers from the railroads to the steamship dock would constitute "interstate commerce" but noted that the revenue received from this operation was only one-tenth of one per cent of the annual gross revenue (Tr. 90, Appendix A, *infra*, p. 47). The court then concluded:

> ". . . we do not believe that Seattle's Yellow cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that an unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the Superior Court was in error in holding that the jurisdiction of this case lies with the National Labor Relations Board" (Tr. 82-91; Appendix A, *infra*, p. 47).

On February 10, 1959, the Supreme Court of Washington entered its judgment in the matter, which judgment decrees that the requested writ of mandate is granted directing the Superior Court of King County to take jurisdiction of the service corporation's action for injunctive relief (Tr. 92-93; Appendix A, *infra*, pp. 49-50). By order of the Chief Justice of the Supreme Court of Washington, the judgment has been stayed, pending this petition for certiorari (Tr. 94-95).

REASONS FOR GRANTING WRIT

1. The Judgment of the Court Below Is Based Upon the Court's Erroneous Interpretation of the Scope of the National Labor Relations Act, Contrary to the Language of the Act and the Decisions of This and Other Courts

The court below held that the activities of Seattle's Yellow Cab system are not within the scope of the National Labor Relations Act. The court acknowledged that the taxicab system did an annual gross business of $1,429,914.02 and that a substantial portion of this revenue was earned through the exercise of franchises with the railroad, airline and steamship terminals, utilized by interstate carriers of passengers, by which it was granted exclusive rights to pick up passengers arriving at these terminals. But, in the court's view (1) the operations of the taxicab system do not constitute an integral part of interstate commerce and (2) there is no evidence the strike of Local 465 has actually burdened or obstructed the service to and from the railroad, airline and steamship terminals so that it could be said to "affect commerce." Petitioners submit that in so holding the court misinterpreted the scope of the National Labor Relations Act.

a. *Contrary to the holding of the court below, the scope of the National Labor Relations Act extends beyond activities in interstate commerce to activities which affect interstate commerce*

In holding that the activities of the Seattle Yellow Cab system are not a part of interstate commerce, the opinion of the court below conflicts squarely with decisions of the National Labor Relations Board. The Board has held that where a taxicab company services

the terminals of interstate railroads and airlines, it is functioning "as an essential link in the services performed by the interstate carrier."[4]

Furthermore, in stating the issue to be "whether the Seattle Yellow Cab system is engaged 'in (interstate) commerce'," the court below applied an erroneous and restrictive interpretation of the National Labor Relations Act. The Act, by its very terms, extends not only to industries which are engaged in commerce but to all industries which "affect commerce." Appendix B, *infra*, pp. 51-55. In the early days of the Act's administration this court had occasion to point out that the Act was an exercise of the full reach of the constitutional power of Congress to "regulate commerce" and that it extended to activities which, separately considered, could be deemed to be intrastate in character:

> "It has been settled by repeated decisions of this court that an employer may be subject to the National Labor Relations Act although not himself engaged in commerce. The end sought in the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act. . . . Long before the enactment of the National Labor Relations Act it had been many times held by this court that the power of Congress extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate." *NLRB v. Fainblatt*, 306 U.S. 601, 604-605, 83 L.ed. 1014 (1939).

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[4] *Red Cab, Inc.*, 92 NLRB 175 (1950). (See full discussion of the Board cases, *infra*, pp. 28-34).

Thus, even if the activities of the Seattle Yellow Cab system do not constitute an integral part of interstate commerce, this does not dispose of the question of whether these activities bring the taxicab system within the scope of the National Labor Relations Act. The proper test is whether these activities "affect commerce." Petitioners contend that the evidence in this case is more than sufficient to establish that the activities of the Seattle Yellow Cab system affect commerce, *i.e.*, that unfair labor practices on the part of the system or the union could lead "to a labor dispute burdening or obstructing commerce or the free flow of commerce."[5]

b. *Decisions arising under the Sherman Anti-Trust Act and the Fair Labor Standards Act are inapposite in determining the scope of authority granted to the National Labor Relations Board by the National Labor Relations Act*

In holding that the activities of the Seattle Yellow Cab system were not subject to the jurisdiction of the

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[5] A labor dispute involving this taxicab system which operates 120 taxicabs and which does an annual business of almost one and one-half million dollars could logically burden or obstruct commerce in the following ways, among others: (1) by cutting off taxicab transportation to and from the railroad, airline and steamship terminals, making it difficult or impossible for passengers to utilize interstate railroads, airlines and steamships, and thus impeding, curtailing or diminishing the activities of such carriers; (2) by cutting off taxicab transportation to and from the large industrial plants, such as are found in a city the size of Seattle, thereby impeding, curtailing or hindering the operation of such plants; (3) by cutting off or curtailing the purchases of taxicabs, gasoline, tires and other supplies ordinarily made by a large taxicab company; thus impeding, curtailing or diminishing interstate shipment of such items. Furthermore, the immediate dispute might be "representative of many others throughout the country, the total incidence of which if left unchecked may well become far reaching in its harm to commerce." *Polish National Alliance v. NLRB*, 322 U.S. 643, 648, 88 L.ed. 1509 (1944).

National Labor Relations Board, the court below cited *United States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, 26 Stat. 209, as amended, 15 U.S.C., Sec. 1 *et seq.*, and *Mateo v. Auto Rental Co.* (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U.S.C. Sec. 201 *et seq.* The court below relied heavily upon the *Yellow Cab Co.* decision, considering it as "appropriate authority for the position we here take" (Tr. 89; Appendix A, *infra*, p. 45).

Petitioners respectfully submit that both the *Yellow Cab Co.* and *Mateo* cases, *supra*, are inapposite to the issue of whether the activities of the Seattle Yellow Cab system are subject to the National Labor Relations Board. The two federal statutes involved in those cases are not similar in scope to the National Labor Relations Act.

In *United States v. Yellow Cab Company, supra*, the issue for this court's resolution was whether a complaint stated a cause of action under the Sherman Act, which prohibits contracts or conspiracies "in restraint of trade or commerce among the several states." The complaint alleged, in part, that the defendant had conspired to monopolize the taxicab business in the City of Chicago. This business was asserted to have an interstate character because the taxicabs involved, in the course of their ordinary operations in and around Chicago, took passengers to and from the Chicago railroad stations.[6]

[6] This court was careful to point out that the taxicab companies involved had "no contractual or other arrangements with the interstate rail-

This court held that these allegations were not sufficient to state a cause of action under the Sherman Act for, in this court's view, the transportation of passengers to and from the railroad stations did not constitute "an integral part of interstate commerce." However, the court very carefully pointed out that its decision was based solely upon the facts of the particular case, as applied to the Sherman Act. No other federal act was involved or interpreted. Said the court:

> "We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act.
>
> * * *
>
> "All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. 218, 232-233.

Thus, this court in the *Yellow Cab* case was not called upon to decide whether certain activities of a taxicab company, in transporting passengers to and from railroad stations in the City of Chicago, might "affect commerce," within the meaning of the National Labor Re-

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roads." 332 U.S. 218, 231. This alone would distinguish the *Yellow Cab* case from the instant case. Here, the trips to and from the terminals are made pursuant to franchise or concession agreements which give the taxicab company the exclusive right to service the terminals and which require the company to maintain adequate service at the terminals. See *supra*, pp. 10-13.

lations Act. For this reason, petitioners contend that the *Yellow Cab* decision does not support the judgment below.

Petitioners also contend that the judgment of the court below receives no support from *Mateo v. Auto Rental Company, supra.* Here the issue was whether the drivers of vehicles taking passengers to and from the Honolulu airport were "engaged in commerce" within the meaning of the Fair Labor Standards Act. The court did not have before it, nor did it pass upon, the issue of whether the operations of these drivers might "affect commerce." Indeed, the court took pains to point out that such an issue was not involved in the case:

> "Our analysis of the applicable law must of necessity commence with the statutory language (of the Fair Labor Standards Act). We note initially that Congress has not legislated to the constitutional limits of the commerce power, but has instead restricted the purview of the Act to those 'engaged in commerce.' It is not enough that the activity affect commerce; the employee must actually be engaged in interstate commerce. We therefore set aside considerations which govern the determination of those cases dealing with the broader 'affect' concept. Neither do we regard as relevant those cases involving the 'production of goods for commerce' provision. Of these three different phrases used in connection with the commerce power, the one with which we are concerned is the narrowest in scope."

Accordingly, the *Mateo* decision is inapposite to the issues in the instant case. It is interesting to note, in

this connection, that the National Labor Relations Board has refused to consider decisions arising under the Fair Labor Standards Act, in determining the exercise of its own jurisdiction. In *Roane-Anderson Company*, 77 NLRB 953 (1948), the employer challenged the exercise of the Board's jurisdiction on the ground that two recent decisions of a federal district court had held that his business was not covered by the Fair Labor Standards Act. The Board rejected this argument, stating:

> "The definition of the Board's jurisdiction is, however, broader than that granted in the Fair Labor Standards Act. The Board's jurisdiction extends to employers and employees whose operations 'affect commerce' whereas the application of the Fair Labor Standards Act is limited to employees 'engaged in commerce' or 'in the production of goods for commerce'."

For the foregoing reasons petitioners submit that decisions arising under the Sherman Act and the Fair Labor Standards Act are inapposite to the issue of whether the activities of the Seattle Yellow Cab system, in the instant case, fall within the scope of the National Labor Relations Act and are subject to the National Labor Relations Board.

c. Contrary to the holding of the court below, the jurisdiction of the National Labor Relations Board is not dependent upon a showing that there has been an actual stoppage or obstruction of interstate commerce

The court below devoted but a single paragraph to the question of whether the activities of the Seattle Yellow Cab system might "affect" commerce. The court below held that commerce was not affected in this case

because there was no evidence that the strike and picketing of Local 465 had interfered with the transportation of passengers to and from the railroad, airline and steamship terminals and thus no evidence that commerce was actually burdened or obstructed (Tr. 90, Appendix A, *infra*, p. 47).

The holding of the court is, first of all, inconsistent with the position of the plaintiff service corporation in the trial court and in the court below. While it is true that little testimony was taken on the matter, the service corporation continually took the position that the strike and picketing was causing irreparable damage to the taxicab business conducted by it and the purchasing corporations. See, for example, the affidavit of A. H. Wenck, president of the service corporation, filed in support of the application for a writ of mandate, wherein he asserts that the dispatchers and drivers have not reported for work, that this has caused "substantially reduced operations," that there have been "considerable delays" in rendering services, and that a continuation of the strike and picketing may put the service corporation and the purchasing corporations completely "out of existence, thereby diminishing competition and also injuring the general public" (Tr. 45-46).

Secondly, the court below clearly erred in holding that the jurisdiction of the National Labor Relations Board is dependent upon a showing that unfair labor practices have resulted in a labor dispute actually burdening commerce. This court and other courts which have considered this contention have uniformly held that the exercise of jurisdiction by the Board is not de-

pendent upon a showing of an actual stoppage or impairment of commerce:

> "It is not material as the court below thought, that respondent's customers might be able to secure the same services from other Rhode Island processors if the labor dispute should stop the interstate flow of materials to and from respondent's plant. Since the purpose of the act is to protect and foster interstate commerce, the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 326, 84 Led. 1226 (1940).

Accord: *Phoenix Mutual Life Insurance Company*, 73 NLRB 1463 aff'd (7th Cir. 1948) 167 F.2d 983; *NLRB v. Alloy Cast Steel Co.* (6th Cir. 1941) 117 F.2d 302; *NLRB v. American Potash and Chemical Corp.* (9th Cir. 1938) 98 F.2d 488.

2. The Judgment of the Court Below Conflicts with the Decisions of the National Labor Relations Board

On October 2, 1958, the National Labor Relations Board announced, through a press release, that henceforth it would assert jurisdiction over any taxicab company which does an annual gross business of $500,000 or more. It also announced that henceforth it would assert jurisdiction over any company operating as an instrumentality, link or channel of commerce which annually grosses $50,000 from the interstate, or linkage part of its business, or any company which annually grosses $50,000 from services performed for companies

in interstate commerce. (NLRB Press Release, No. R-576, October 2, 1958).[7]

Pursuant to its October 2, 1958, announcement, the National Labor Relations Board is now taking jurisdiction over local taxicab companies which annually gross more than $500,000. The first reported case in which the Board applied its new standards is *Cab Services, Inc.*, 123 NLRB No. 19 (March 12, 1959).[8] There, as in the instant case, the taxicab business is carried on by a number of individual taxicab owners and a service corporation. Among other things, the service corporation, in which the taxicab owners hold stock, supplies dispatching, bookkeeping and managerial services to the taxicab owners. The service corporation employs a "manager" who hires, fires and disciplines the employee-drivers, and who assigns them to drive the various cabs.

Noting that even the parties in the case agreed that the operations of the service corporation and the taxicab owners were "closely integrated," the Board found that these companies constituted a single Employer, and that the Employer's annual gross volume of business exceeded $700,000. The Board then asserted its jurisdiction, and directed that a representation election be held among the employee-drivers working for the Employer. Said the Board:

"In view of the Board's decision to apply its re-

[7] For the convenience of the court, the pertinent portions of this press release are printed in Appendix C, *infra*, pp. 56-57.

[8] For the convenience of the court, the Board's decision in this case, which is not yet printed in bound volumes of Board decisions, is printed in Appendix C, *infra*, pp. 58-64.

vised jurisdictional standards to all pending cases, and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein."

In the past decade the Board has had a wavering policy with respect to whether it should *assert* jurisdiction over local taxicab companies, but it has never held that it did not *possess* the jurisdiction or power to deal with such companies, especially where the evidence showed that they serviced the terminals of interstate railroads, bus lines, and air lines.[9]

In 1949 the Board asserted jurisdiction over a local bus and taxicab company operating in a small Colorado community noting, among other things, that "In the course of its operations, the Company's taxis haul passengers to the railroad company, bus and air terminals in the usual proportion for communities the size of Westwood. *Bussard Taxi and Bus Service*, 81 NLRB 1181 (1949).[10]

In 1950, however, the Board announced that it would not *assert* jurisdiction over a local taxicab company in the City of Los Angeles even though it had an annual gross revenue of more than $10,000,000 and a substantial portion of this revenue was received from trips made to and from the railroad stations, bus terminals,

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[9] As this court observed in *NLRB v. Denver Building and Construction Trades Council et al.*, 341 U.S. 675, 95 L.ed. 1284 (1951) the Board often refuses to exercise or assert the full measure of jurisdiction which it possesses.

[10] See also: *Chicago Grey Line, Inc.*, 81 NLRB 466 (1949) and *Gates City Transit Lines*, 88 NLRB 79 (1949).

and the airport. *Yellow Cab Company of California*, 90 NLRB 1884 (1950).[11] The Board held:

> "While we believe that the employer's business is not entirely unrelated to interstate commerce, we are of the opinion that its operations are essentially local in character and we find that it would not effectuate the policies of the Act to assert jurisdiction in this case."

A few months later the Board reversed the *Yellow Cab Company of California* decision and asserted jurisdiction over a local taxicab company in Indianapolis, Indiana. *Red Cab, Inc.*, 92 NLRB 175 (1950). The evidence showed that the taxicab company had contracts with railroad, bus and airline terminals, used by interstate carriers, by which it was granted exclusive rights to pick up passengers at these terminals and that 5.1% of its annual trips were made from these terminals. The Board held:

> "... a portion of the employers' business involves providing transportation services from four established terminals, concededly handling interstate traffic, under arrangements which give the employer certain special and exclusive privileges regarding such services. In these circumstances, we are persuaded that the employers' operation may properly be regarded as an essential link in the services performed by these instrumentalities of commerce, and believe that the reasons which motivated our decision to assert jurisdiction over such instrumentalities are easily applicable here. We

[11] For other decisions in which the Board declined to assert jurisdiction over local taxicab companies see: *Skyview Transportation Company*, 90 NLRB 1895 (1950); *Brooklyn Cab Company*, 90 NLRB 1898 (1950).

therefore find that it will effectuate the policies of the Act to assert jurisdiction in this case."

* * *

"(footnote 10) The decision in *Yellow Cab Company of California*, 90 NLRB 1884, is hereby overruled insofar as it conflicts with the instant decision."[12]

In *Cambridge Taxi Company*, 101 NLRB 1328 (1952) the Board announced a modification of its jurisdictional policy with respect to taxicab companies, stating that, in the future, it would only assert jurisdiction where the taxicab company involved was either the sole company in the area servicing the terminals of interstate carriers or where it performed such service pursuant to an exclusive franchise or agreement, and where the income received from such services constituted a substantial portion of total revenue.[13]

Finally, in 1954, the Board reverted to the position taken earlier, in the *Yellow Cab Company of California* case, and stated that it would no longer assert jurisdiction over local taxicab companies. *Checker Cab Company*, 110 NLRB 683 (1954). This decision was cited by the court below in support of its holding that the Board does not have jurisdiction of the taxicab company in the instant case (Tr. 89; Appendix A, *infra*, at p. 46). However, in this decision, as well as the

[12]For other decisions in which the Board asserted jurisdiction over local taxicab companies see: *Skyview Transportation Company*, 90 NLRB 1664 (1951) reversing the prior decision in 90 NLRB 1895 (1950); *Rite Rate Cab Co.*, 95 NLRB 1302 (1951); *Charman Service Corporation*, 99 NLRB 534 (1952); *Red Cab Company*, 98 NLRB 932 (1952), enf'd. *NLRB v. Cashman Auto Company* (1st Cir. 1952) 200 F.2d 412.

[13]For decisions in which the Board applied this modified policy see: *New Taxi Dispatch Corporation*, 110 NLRB 1327 (1952); *The Taxi Transit Company*, 102 NLRB 45 (1953); *Yellow Cab Company* (Wichita Falls, Texas), 103 NLRB 395 (1953).

earlier decisions where the Board declined jurisdiction over taxicab companies, the Board was careful to point out that it was not holding that taxicab companies fell outside the scope of the Board's power but simply that the full measure of this power or jurisdiction would not be exercised. As the Board stated in the *Checker Cab Company* decision:

> "Jurisdiction will not be *asserted* over the Employer. *We are willing to concede that taxicab companies, like those involved in this case, may fall within the broad scope of the Board's legal power to assert jurisdiction.* However, as recognized by the court, the Board may properly refuse to exert the full limits of this power when the assertion of jurisdiction will not effectuate the basic purposes of the Act."
>
> * * *
>
> "Accordingly we shall refuse to *assert* jurisdiction over taxicab companies, and the *Cambridge* decision is hereby overruled." (Emphasis added)[14]

The judgment of the court below conflicts squarely with the decisions of the National Labor Relations Board. At the present time the Board is asserting jurisdiction over local taxicab companies, like the one in the instant case, which have an annual gross volume of business in excess of $500,000. In the opinion of the court below, "the ultimate test is not the amount of gross volume of business."

In the past, the Board has asserted jurisdiction over local taxicab companies, like the one in the instant case,

[14] It is doubtful, in view of the rulings of this court, that the Board could lawfully refuse to assert jurisdiction over taxicab companies, as a class, as it attempted to do in this 1954 decision. *Hotel Employees Local 255 et al. v. Leedom*, — U.S. —, 3 L.ed. 143 (1958).

which devote a substantial portion of their operation to delivering and picking up passengers at terminals of interstate railroads, bus lines and air lines. The Board has ruled in these cases, that such operations constitute "an essential link in the services performed by the instruments of commerce" and that they "affect commerce" within the meaning of the Act. In the opinion of the court below, the activities of the company in the instant case do not constitute an "integral step in the interstate movement of passenger traffic" and do not "affect commerce" within the meaning of the Act.

3. The Judgment of the Court Below Conflicts with the Decisions of the New York Courts in *New York State Labor Relations Board v. Wags Transportation System, Inc.*.

Not only does the judgment of the court below conflict with the decisions of the National Labor Relations Board, but it also conflicts with the decisions of the New York courts in *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S. 2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954). In this case the New York State Labor Relations Board brought an action seeking to enforce an order issued by it against the Wags Transportation System, Inc., a New York City taxicab company. The company defended on the ground that the controversy was subject to the exclusive jurisdiction of the National Labor Relations Board. The evidence showed that the company owned and operated 57 taxicabs and that it was part of an over-all system of 29 taxicab companies known as the Terminal System, Inc. Terminal did

not operate any taxicabs but it possessed agreements with the New York Central Railroad, New Haven Railroad, Pennsylvania Railroad, and other railroads by which its member companies were given the exclusive right to maintain their taxicabs at these terminals for the purpose of servicing incoming passengers. More than 15% of the trips made by Terminal System taxicabs were made from these terminals.

The court held that, under National Labor Relations Board decisions, it was proper to consider all of the companies making up the terminal system as a single unit or single employer to determine the existence of the Board's jurisdiction. The court also held that the operations of the Terminal System "affected commerce" and were subject to the exclusive jurisdiction of the National Labor Relations Board:

> "Taxicabs, particularly those which have a franchise to serve railroad and bus terminals, are an adjunct of interstate travel. Their temporary unavailability would constitute a burden upon interstate rail and bus travel . . . Industry or commerce need not be dealt a paralyzing blow before it can be deemed to be burdened by a labor dispute affecting such commerce. As a practical matter, curtailment or elimination of such taxi service would have a substantial effect upon interstate commerce. A labor dispute could very well have a greater impact upon transportation service to interstate passengers than a conspiracy to exclude competition. Wags' operation has a sufficient impact upon interstate commerce to justify the NLRB in asserting jurisdiction over its operation."

This decision is in irreconcilable conflict with the holding of the court below.

4. The Judgment of the Court Below Conflicts with the Position of the Federal Mediation and Conciliation Service in This Case

When the strike of Local 465 against the Seattle Yellow Cab enterprise got under way; the Federal Mediation and Conciliation Service stepped in and summoned the parties to a meeting to attempt to resolve their differences so that the strike could be terminated. Two such meetings were held, but no agreement was reached and the strike continued (Tr. 12-13,28; St. 117-123).

Under the statutes creating the Federal Mediation and Conciliation Service, that Service is given jurisdiction to offer its services only in a "labor dispute in any industry affecting commerce . . . whenever in its judgment such dispute threatens to cause a substantial interruption of commerce." 61 Stat. 152, as amended, 29 U.S.C. Secs. 171-174. Thus, in the instant case, the Federal Mediation and Conciliation Service, by offering its services, made a determination that the activities of the Seattle Yellow Cab system "affected commerce" and that the strike of Local 465 threatened to cause a "substantial interruption in commerce."

The judgment of the court below, based as it is upon a holding that the Seattle Yellow Cab system is not engaged in commerce and that the strike of Local 465 does not affect commerce, conflicts with the position and determination of the Federal Mediation and Conciliation Service.

CONCLUSION

We have indicated above the reasons why this petition for a writ of certiorari should be granted. The judgment of the court below (1) is based upon the court's erroneous interpretation of the scope of the National Labor Relations Act; (2) conflicts with the decisions of the National Labor Relations Board; (3) conflicts with the decisions of the New York courts in the *Wags Transportation System* case; and (4) conflicts with the position taken by the Federal Mediation and Conciliation Service.

Because of the conflict between the position of the court below and the position of the National Labor Relations Board, this case is of great interest, not only to the litigants immediately involved, but to taxicab companies and unions across the nation. It is of importance to these companies and unions to know whether their right and duties, in the field of labor management relations, are to be governed by the state or federal law.

WHEREFORE, petitioners respectfully pray that this petition be granted and a writ of certiorari issue to review the judgment of the court below.

Respectfully submitted,

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Seattle 4, Washington
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APPENDIX A

I. OPINION OF THE SUPREME COURT OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, *Plaintiff and Relator,*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 455; and GEORGE LANCASTER, its Secretary-Treasurer, *Defendants and Respondents,*

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, *Respondent.*

No. 34929
En Banc

This is an application for a writ of mandate sought by the relator, Yellow Cab Service, Inc., a Washington corporation, to direct the superior court of King county to take jurisdiction of its action against the International Brotherhood of Teamsters (hereinafter referred to as the union) to enjoin the picketing of its premises. The union successfully attacked the superior court's jurisdiction over the relator's action on the ground that the only proper forum was the National Labor Relations Board.

Some background on the controversy between the relator and the union is necessary. Until 1955, the Yel-

low Cab company in Seattle was a partnership. During 1955 and 1956, a plan of liquidation was put into effect, under which all of the taxicabs were sold to some one hundred-eighteen individual Washington corporations independent in ownership from the relator corporation and from the original partnership. These one hundred-eighteen individual corporations, most of which purchased just one taxicab, then undertook the functions of operating their respective taxicabs. All taxicabs were purchased under conditional sales contracts from the partnership, none of which has been completely paid off as yet.

The trial court found that the relator corporation was organized for two purposes: (1) for service to the one hundred-eighteen individual taxicab operators, and (2) for assurance to the partnership that the taxicabs it had sold would ultimately be paid for. The relator corporation is controlled by the original partnership.

The central dispatching facilities were transferred to the relator. The relator also furnishes for the individual taxicab operators accounting and bookkeeping services, advertising services, and services as a bargaining agent for insurance upon all of the taxicabs. From the partnership the relator has derived certain exclusive contractual rights for Yellow Cabs to pick up arriving passengers at the Seattle railroad terminals, airports, and passenger steamship docks. The relator holds and owns the Yellow Cab color rights, and the good will attached to the name of the Yellow Cab company, and grants their use to the individual taxicab operators.

As security during the period in which the taxicabs

are being paid for, the partnership retains, through its conditional sales contracts, a considerable control over the quality of the Yellow Cab service. The conditional sales agreements give the partnership the right to repossess taxicabs if their operators are guilty of breaches of good operating procedure as defined by the directors of the relator corporation, though, in practice, no such repossession has taken place. Matters of operating procedure and discipline of taxicab operators are handled through an operating committee of all of the operators, plus the representatives of the relator. Power to discipline operators is sometimes delegated by the operating committee to a "personnel manager" supplied by the relator.

In 1956, the relator and all of the operators bargained together with the union in making a contract which all parties signed. This contract terminated on June 1, 1958. The relator claims that it has accepted the union contract offered this year, and that many of the independent operators have also done so. The union, it is charged, has refused to sign the contract with the relator or any of the operators until some twenty to thirty of the operators, who have not at this time accepted the offered contract, be persuaded, or compelled, to accept it. Furthermore, the relator charges that as a result of the union's dispute with these twenty to thirty operators the union is picketing the relator's place of business in Seattle, and such picketing has caused relator's crew of dispatchers to leave their jobs and remain away until such time as all of the taxicab operators, along with relator, agree to the union's contract. The relator, therefore, claims that it has no part in

whatever labor dispute now exists, and that the picketing of its premises can properly be enjoined.

The merits of this case were never determined in the superior court, due to that court's decision that it did not have jurisdiction to proceed with the case. The superior court decided that the Yellow Cab system was in interstate commerce and that the case presented a labor dispute affecting interstate commerce over which the National Labor Relations Board would have jurisdiction. Relying on *Guss v. Utah Labor Relations Board* (1957) 353 U.S. 1, the superior court held that the federal jurisdiction over this case was exclusive and preempted the state court's jurisdiction.

The National Labor Relations Act empowers the National Labor Relations Board "to prevent . . . any person from engaging in any unfair labor practice . . . affecting commerce." 49 Stat. 453, 29 U.S.C.A. § 160(a). The definition of the term "affecting commerce" is given as follows, at 49 Stat. 450, 29 U.S.C.A. § 152(7):

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead a labor dispute burdening or obstructing commerce or the free flow of commerce."

The term "commerce" used herein at all times refers to interstate commerce subject to Federal regulation. See 49 Stat. 450, 29 U.S.C.A. § 152(6).

The first question to be answered concerning the National Labor Relations Board's jurisdiction in this case is whether Seattle's Yellow Cab system is "in (interstate) commerce." The conclusion of this court is that it is not.

The union places some reliance on a recent press release (October 2, 1958) from the National Labor Relations Board indicating that it will assume jurisdiction in cases involving taxicab companies where the annual gross volume of business is $500,000 or more. We are of the opinion that the ultimate test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce. *Guss v. Utah Labor Relations Board, supra.*

The Yellow cabs are based in the city of Seattle and operate almost entirely within King county. In order to establish that they are in interstate commerce, the union relies upon the business these taxicabs do in picking up and delivering passengers at the railroad terminals, airports, and passenger steamship docks. The total gross revenues received by all of the hundred and eighteen taxicab corporations from July 1, 1957, through June 30, 1958, was $1,429,914.02. Gross revenues received from picking up passengers from the Seattle airports were $141,460.80 from Seattle-Tacoma Airport and $14,601.60 from King County Airport (Boeing Field). An estimate was made at the trial that this constituted seventy per cent of the full business of these taxicabs in serving these airports, the remaining thirty per cent involving trips *to* the airports. Not all of these gross revenues came from passengers traveling interstate, however it appears that a substantial portion did.

No similar accounting was made concerning the gross revenue derived from servicing the railroad terminals or the passenger steamship docks, except for a relatively few passengers who, on prearranged tours, arrived at railroad terminals and took taxicabs directly

to the Canadian Pacific docks, paying their taxicab fare by coupon. The gross revenues from the coupons received from these travelers totalled just $1,436.55 during the accounting year (approximately one-tenth of one per cent of the gross revenues).

A taxicab company having relatively the same scope of business was considered by the Supreme Court of the United States in *United States v. Yellow Cab Co.* (1947) 332 U.S. 218, 67 S.Ct. 1560, 91 L.Ed. 2010. That case concerned the sufficiency of a complaint brought under the Sherman Antitrust Act, involving, among other things, monopolistic practices in the Chicago taxicab fleet. The court held that the Sherman act did not apply to the Chicago taxicab business because this manner of transportation was too predominantly a local activity to constitute an integral part of interstate commerce. The court held that,

> "... when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. ..." 332 U.S. at 233.

As explanation for this holding, the court said:

> "In a sense, of course, a traveler starts an interstate journey when he boards a conveyance near his home, office or hotel to travel to the railroad station, from which the journey is continued by train; and such a journey ends when he alights from a conveyance near the home, office or hotel which constitutes his ultimate destination. Indeed,

the terminal points of an interstate journey may be traced even further to the moment when the traveler leaves or enters his room or office and descends the building by elevator.

"But interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. *Swift & Co. v. United States*, 196 U.S. 375, 398; *North American Co. v. S. E. C.*, 327 U.S. 686, 705. And interstate journeys are to be measured by 'the commonly accepted sense of the transportation concept.' *United States v. Capital Transit Co.*, 325 U.S. 357, 363. Moreover, what may fairly be said to be the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey. We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

"Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. . . . " 332 U.S. at 231 and 232.

The task of drawing the line which bounds interstate commerce is anything but simple. *United States v. Yellow Cab Co., supra*, has drawn such a line, however, and we consider its holding to be an appropriate authority for the position we here take.[1]

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[1] That *United States v. Yellow Cab Co., supra*, was decided under the Sherman Act does not make it less an authority upon the instant case.

More recently the Ninth Circuit Court of Appeals has considered the question of whether employees who drove airport limousines back and forth between downtown Honolulu and the airport were within the provisions of the Fair Labor Standards Act. See *Mateo v. Auto Rental Co.* (1957) 240 F.(2d) 831. The precise issue in that case was whether the drivers of so-called "airporter" vehicles in Honolulu were engaged in interstate commerce, and the "ultimate test is whether the local transportation service is an 'integral step in the interstate movement'." The court held that the drivers were not engaged in "interstate commerce."

A similar holding has also been made by the National Labor Relations Board in *Checker Cab Co.* (1954) 110 N.L.R.B. 683, wherein it was stated:

> "? . . Taxicab companies, by their very nature, perform local operations and are essentially local entities. To assert jurisdiction over such enterprises would neither comport with the congressional intent that the Board refrain from extending its activities to matters of local significance, nor otherwise effectuate the policies of the Act."

We do not believe that whatever unfair labor practice may be present in this case can possibly be said to be "burdening or obstructing commerce" (see 49 Stat.

In that case, as in this one, the issue was whether there was any appreciable aspect of interstate commerce involved in the city's taxicab business. The court said, page 225, "But the amount of interstate trade thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlaws unreasonable restraints on interstate commerce, regardless of the amount of the commerce affected. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, note 59, p. 225; *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 485. . . . " Hence it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy.

450, 29 U.S.C.A. §152(7) quoted above). There is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify the application of the National Labor Relations Act. *United States v. Yellow Cab Co., supra.* No such circumstance is present in this case.

It would be easier to assert as interstate commerce the carriage of those above-mentioned passengers on prearranged tours to take Yellow Cabs directly from the railroad terminals to the Canadian Pacific docks. A comparison of gross revenues derived from this source, however, against the total gross revenues received from all Yellow Cab operations, shows that this station-to-docks business comprises one-tenth of one per cent of the total Yellow Cab operations.

The issue presented here concerning the scope of interstate commerce requires a determination guided by practical considerations, not technical conceptions. *Mateo v. Auto Rental Co., supra.* If it be conceded that one-tenth of one per cent of its total operations is in interstate commerce, we do not believe that Seattle's Yellow Cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the superior court was in error in holding that the jurisdiction of this case lies with the National Labor Relations Board.

For the consideration of the jurisdictional issues here presented, we have accepted the union's hypothesis that the relator and the one hundred-eighteen operating corporations constitute a system that can be treated as an entity. If it is such an entity, a matter which we do not decide, we hold that there is no unfair labor practice here involved which affects or burdens interstate commerce.

The writ of mandate is hereby granted directing the superior court of King county to take jurisdiction of relator's suit for injunctive relief.

HILL, C. J.

We concur:

MALLORY, J.
FINLEY, J.
WEAVER, J.
DONWORTH, J.
ROSELLINI, J.
OTT, J.
FOSTER, J.
HUNTER, J.

2. JUDGMENT OF THE SUPREME COURT OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON on the Relation of YELLOW CAB SERVICE, INC., a corporation, *Relator*, vs. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465; and GEORGE LANCASTER, its Secretary-Treasurer, *Defendants and Respondents*, and THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, Judge, *Respondent*.	Tuesday, February 10, 1959 **JUDGMENT**

This cause having been heretofore submitted to the Court upon the application of the relator for a writ of Mandate to direct respondent to take jurisdiction of its action against the International Brotherhood of Teamsters to enjoin the picketing of its premises in that certain cause in which Yellow Cab Service, Inc., a corporation, is plaintiff and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al., are defendants in the records of the Superior Court of the State of Washington in and for King County being cause No. 526958 of said Court, and the Court having fully considered the same and filed its opinion in writing, granting the writ, and on motion

of Little, LeSourd, Palmer, Scott and Slemmons, of counsel for relator,

IT IS ORDERED, Adjudged and Decreed, that the Writ of Mandate be and the same is granted, directing the superior court of King County to take jurisdiction of relator's suit for injunctive relief; and that the said Yellow Cab Service, Inc., a corporation, have and recover of and from the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its Secretary-Treasurer, the costs of this action taxed and allowed at one Hundred fifty-eight and 50/100 Dollars ($158.50); and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Judgment of Record in
Journal 42 at page 594
in the Office of the
Clerk of the Supreme Court.

APPENDIX B

STATUTE INVOLVED

Pertinent sections of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187, are as follows:

Short Title and Declaration of Policy

* * * * * * * *

Section 1 b) . . . It is the purpose and policy of this Act, in order to promote a full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Findings and Policies

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages

in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest in the public in the free flow of commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial

obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by the workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions

* * * * * * * *

Section 2. When used in this Act—

* * * * * * * *

(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States. . . .

(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * * *

Rights of Employees

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

Unfair Labor Practices

* * * * * * * *

Section 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a).

* * * * * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representatives of his employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. . . .

* * * * * * * *

Prevention of Unfair Labor Practices

Section 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determinations of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * * *

Limitations

Section 13. Nothing in this Act, except as specifically

provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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APPENDIX C

1. PRESS RELEASE OF NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

FOR IMMEDIATE RELEASE (R-576)
THURSDAY, OCTOBER 2, 1958

N.L.R.B. ANNOUNCES CHANGES IN EXERCISE OF JURISDICTION

The National Labor Relations Board today announced changes in its standards for determining in which cases the Board will exercise its jurisdiction. The current standards were adopted in July, 1954.

The new standards take immediate effect, applying both to all cases now pending before the Agency and to all cases which may be filed.

The various elements of the new standards will be set forth in decisions rendered by the Board following October 2, 1958.

The Board's action was taken pursuant to its statement of July 22, 1958, wherein the Board: (1) announced certain proposed changes in its standards; and (2) invited briefs or comments by any interested groups, organizations and persons. At that time the Board said:

> "We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of *Guss v. Utah Labor Relations Board*. Therein the Supreme Court adverted to 'a vast no-man's land; subject to regulation by no agency or court,' and declared: (1) 'Congress is free to change the situation;' and (2) 'The National Labor

Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction.'

"On Friday (July 18), the Congress voted approval of the Board's appropriation for the fiscal year 1958-1959. The total was $13,100,000, of which $1,500,000 took into allowance the extension of the Board's jurisdiction into some of the area covered by the so-called no-man's land.

"Today, we are announcing this action, so that more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute."

Following are the new standards which revise somewhat the proposals set forth in the July announcement:

* * *

4. *Instrumentalities links and channels of Interstate Commerce*: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.

* * *

6. *Transit systems*: $250,000 gross volume.[2]

[2]Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

* * *

2. DECISION OF THE NATIONAL LABOR RELATIONS BOARD IN THE *CAB SERVICES, INC.*, CASE 123 NLRB No. 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAB SERVICES, INC., d/b/a RED AND WHITE CAB COMPANY,[1] *Employer*, and CHAUFFEURS AND ASSOCIATED WORKERS UNION, *Petitioner*.	Case No. 18-RC-3779 Issued Mar. 9, 1959

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in the taxicab business in Minneapolis, Minnesota, operating about 48 cabs, 38 of which are owned by the individual owner-drivers

[1] Cab Services, Inc., is a Minnesota corporation, all of whose shareholders are cab owners who are also associated together in an unincorporated group known as Red and White Airway Taxicab Association. All parties agree that the operations of the corporation and the association are closely integrated, and that they constitute a single Employer.

who are the shareholders in Cab Services; the remaining cabs are owned by the corporation itself or by the Red and White Airway Taxicab Association. The Employer's annual gross volumes of business is in excess of $700,000. The gas and oil used in the Employer's operations, to the value of $60,000 per year, is purchased from sources which obtain it from outside Minnesota. The Intervenor contends that the Board should not assert jurisdiction here, because the contract between the Intervenor and the Employer, which the former urges as a bar, was entered into on the assumption that the rules of interpretation of the Minnesota Department of Labor would be applicable. In view of the Board's decision to apply its revised jurisdictional standards to all pending cases,[2] and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein.[3]

2. The labor organizations involved claim to represent certain employees of the Employer.[4]

3. The Intervenor contends that a current contract between it and the Employer is a bar to this petition. The contract, effective from February 15, 1958, to February 15, 1960, is a supplement to an existing "master agreement" between the parties. The Petitioner asserts

[2] *Siemons Mailing Service*, 122 NLRB No. 13.

[3] *Carolina Supplies and Cement Co.*, 122 NLRB No. 17, fn. 5.

[4] Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and Helpers Union, Local 958, I.B.T.C.W. & H. of A., referred to herein as the Intervenor, was permitted to intervene on the basis of its contractual relationship with the Employer.

that the contract is not a bar because the master agreement contains an invalid union-security clause. The provision in question is contained in Section I, paragraph A, of the master agreement, and reads as follows:

> "A. The Union shall be the sole representative of all employees covered by this agreement in collective bargaining with the Employer. There shall be no discrimination against any employee because of Union affiliation. The Employer agrees that after a Forty (40) day qualifying period, all new employees shall become members of the Union. In the event that the Union notifies the Employer that any of the drivers are not members in good standing with the Union, it shall be the duty of the Employer to discharge any such driver."

The contract fails to grant the requisite 30-day grace period during which non-member incumbent employees need not join the Intervenor. It thereby fails to conform to Section 8(a)(3) of the Act, and may not, therefore, serve as a bar to this petition.[5] We do not, in these circumstances, pass on other grounds urged by the Petitioner for finding the contract not a bar.

4. The parties agree that all taxicab drivers, servicemen, dispatchers and order takers employed by the Company constitute an appropriate unit. The Petitioner and Intervenor would also include, while the Employer would exclude, the owner-drivers.

Red and White Airway Taxicab Association is an organization comprised of 31 taxicab drivers, each of whom owns at least one cab. The Association itself owns 8 cabs. Each member of the Association owns a share of

[5] *Keystone Coat, Apron & Towel Supply Company*, 121 NLRB No. 125.

stock in Cab Services, Inc., a corporation which owns a building and land on which are located a gasoline station, quarters for drivers, business offices and a dispatching room. Cab Services provides its shareholders with bookkeeping, dispatching and managerial services, legal counsel, representation in labor matters, and facilities for purchasing oil and gasoline. Cab Services also owns 2 cabs. It employs regular, extra, and part-time, or extra-extra, drivers for those shifts when the owner-drivers are not driving, and for all shifts on the cabs owned by itself and the Association. Owners may work longer shifts than other drivers and are not required to work as regularly. They drive only their own cabs. Extra and part-time drivers may be assigned by the Employer to drive any cab available on their shift. The owners keep the receipts earned from their driving, and share the receipts of other drivers of their cabs on a pre-determined basis. The owners pay a fixed weekly amount for the general services rendered by Cab Services. The latter withholds from the receipts due them any amounts necessary to pay social security and income taxes and workmen's compensation and prepares their tax returns on an individual owner basis. Although the owners have been members of the Intervenor, they have not been included in the coverage of the contract between the Intervenor and the Employer.

At yearly shareholder meetings, a board of directors is selected from among the owner-drivers to direct the corporation's affairs and supervise the paid manager who conducts the Employer's routine business. The manager is usually an owner-driver but one who does

no driving while serving in that capacity. The manager hires, fires, and disciplines all drivers other than the owners. The latters' breaches of discipline are referred to the board for decision. Only the shareholders may force an owner to leave the association. The shareholders also reserve to themselves the right to decide disputes between the manager and the board of directors.

Although stock ownership does not alone preclude the inclusion of employee stockholders in a collective bargaining unit with other employees,[6] the Board has excluded them when their stockholding interest gives them an effective voice in the formulation and determination of corporate policy.[7] In the instant case, the owner-drivers are the sole members and stockholders of the Employer, and have an effective voice in determining policy through their selection of the directors who are, themselves, required to be owner-drivers. The stockholders also receive preferential treatment because of their status as owner-drivers, in selection of shifts, and through their freedom from the manager's exercise of disciplinary action against the other drivers. This divergence of proprietary and bargaining interest between stockholders and other drivers requires that the former be excluded from a bargaining unit of employees. Under these circumstances, we shall exclude the owner-drivers from the unit hereinafter found appropriate.

Accordingly, we find that the following employees

[6] *Everett Plywood & Door Corporation*, 105 NLRB 17.

[7] *Brookings Plywood Corporation*, 98 NLRB 794, 798; cf. *Coastal Plywood Company*, 102 NLRB 300.

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All taxicab drivers, cab servicemen, dispatchers, and order takers of the Employer at its Minneapolis, Minnesota, establishment, including extra drivers, but excluding owner-drivers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to Section 102.69 and 102.70 of the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Those in the military services of the United States, may vote, if they appear in person at the polls. Ineligible to vote are employees who have, since that period, quit or been discharged for cause and have not been rehired or reinstated before the election date and employees on strike who are not entitled to reinstatement. Those eligible shall vote whether they desire to be represented, for collective bargaining purposes, by Chauffeurs and Associated Workers Union; or by Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and

Helpers Union, Local 958, I.B.T.C.W. & H. of A.; or by neither.

Dated, Washington, D. C.

PHILIP RAY RODGERS, *Member*

STEPHEN S. BEAN, *Member*

JOHN H. FANNING, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD